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10/082,857	10/19/2001	Cornelis Marinus Huizer	PHNL 010087	4953
24737	7590	10/19/2007		
PHILIPS INTELLECTUAL PROPERTY & STANDARDS			EXAMINER	
P.O. BOX 3001			WYSZYNSKI, AUBREY H	
BRIARCLIFF MANOR, NY 10510			ART UNIT	PAPER NUMBER
			2134	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/082,857
Filing Date: October 19, 2001
Appellant(s): HUIZER, CORNELIS MARINUS

MAILED

OCT 19 2007

Technology Center 2100

Larry Liberchuk
Reg. No. 40,352
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/13/07 appealing from the Office action
mailed 11/29/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1-7 and 14-15.

Claims 8-13 are allowed.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is not correct. The changes are as follows:

NEW GROUND(S) OF REJECTION

Claims 1-7 and 14-15 are rejected under 35 U.S.C. §101.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following new ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-7 and 14-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Page 3, lines 31-33 of the specification states: "some features indicated in the drawings are typically implemented in software and as such represent software entities such as software modules or objects" causing the claims to lack a structural relationship and to be entirely implemented in software that does not include an underlying medium.

Allowable Subject Matter

3. Claims 1-7 and 14-15 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 101, set forth in this Office action.
4. Claims 8-13 are allowed.

(10) Response to Argument

Page 3, lines 31-33 of the specification states: "some features indicated in the drawings are typically implemented in software and as such represent software entities such as software modules or objects", because the appellant did not include all of the features in the drawings in the claim language it is possible for the limitations of the claims to be implemented entirely in software because "some of the features indicated in the drawings are typically implemented in software". Claims 1-7 and 14-15 do not include an underlying medium in which software is stored and are therefore not compliant with 35 U.S.C. 101.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte dismissal of the appeal* as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR

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41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).


Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

(12) Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Aubrey H. Wyszynski

10/11/07 


KAMBIZ ZAND
SUPERVISORY PATENT EXAMINER

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Conferees:

Kambiz Zand


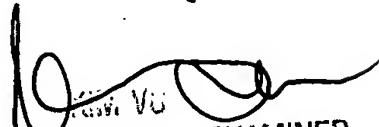
Kim Vu



KAMBIZ ZAND
ASSISTANT PATENT EXAMINER



Jack B. Harvey, Director
Technology Center 2100



KIM VU
ASSISTANT PATENT EXAMINER
TECHNOLOGY CENTER 2100

A Technology Center Director or designee must personally approve the
new ground(s) of rejection set forth in section (9) above by signing below: